IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH
S.B. Civil Writ Petition No.3618/96
Smt. Geeta Devi
Vs.
State of Rajasthan & Ors.

28.03.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Rajeev Bandu for petitioner.
Shri Virendra Lodha for respondent.
Shri Basant Chhaba, Dy. GA for State.

This writ petition has been filed by the petitioner with the prayer that the respondent no.1 and 2 be directed to exercise the powers under Section 292 & 283 of the Rajasthan Municipalities Act, 1959 thereby requiring the respondent Municipal Board, Kuchaman City and Dy. Superintendent of Police to remove the encroachment / obstruction made by respondent No.5 on the part of the road

thereby curtailing width of the road in Surendra Nagar Colony of Kuchaman City. According to the petitioner, he purchased a residential plot measuring 444.50 sq. yards in that colony which was originally part of the khasra no.261 and presently falls in Ward No.11 of the Municipal Board. While width of the road is 20 feet in the records of the respondent Municipality, in fact there exists only 10 feet. In spite of repeatedly approaching the respondents, no action has been taken by them. The respondent no.5 who is the promotor of the colony wields undue influence over Municipal Board and Dy. Superintendent of Police and therefore they are not taking any action against him.

Matter has been contested by the

respondent Municipal Board as also by respondent no.5 Shri Gyanesh Dave. While respondent Municipal Board in its reply has not denied that though measurement has been shown to be 20 feet in the blue print submitted to the Municipal Board for site verification, but the blue print does not bear signature of the seller. It is stated that inspection report of the site also states that plot was open with 20 feet pathway and then the land of the seller all round. It is stated that the petitioner constructed the house and in doing so, she has also encroached upon the public land by building a Khurra in the size of 6 feet x 6 feet on the road towards east of her plot and has even constructed stairs on the land of the road. Respondent no.5 has also contested

this writ petition. He has stated in reply that why the surface of the road was indicated 20 feet in the plan submitted by the petitioner to the Municipal Board, that can be explained by the Municipal Board itself. When site plan was duly sanctioned by the Municipal Board, the petitioner cannot allege any encroachment. He has denied that he ever raised any construction over any part of the land of the road. He has denied that he is in collusion with the officials of the Municipal Board.

Having heard the learned counsel for the parties, I find that while the petitioner asserts that as against the width of 20 feet of the road, only 10 feet is available actually on the ground. Though the Municipal Board and the

respondent no.5 having explicitly denied that the site plan provided to the petitioner by the Board indicates the width of the road as 20 feet. Whether or not on ground the width of 20 feet is available and further whether the petitioner herself has encroached upon such part of the land and whether the respondent no.5 has encroached upon any part of the land thereby reducing the width only to 10 feet, are all questions of fact which possibly cannot be decided in its writ jurisdiction by this Court under Article 226 of the Constitution of India. These issues can be better appreciated by the Civil Court where the parties have the opportunity to adduce the evidence for proving a particular fact. I therefore while holding the writ

petition as not maintainable give liberty to the petitioner to file a civil suit. In doing so, the petitioner would be granted the benefit of Section 14 of the Limitation Act for the period consumed on account of filing of the present writ petition by her on 2.7.1996 which remained pending ever since because she has been bonafidely pursuing this remedy.

With these observations, the writ petition is disposed of.

(Mohammad Rafiq),J.

Rs/-